

REMARKS

Reconsideration of the application is respectfully requested.

This amendment amends only claims 22, 24, 26, 29, 37, 40, and 42, no new claims have been added. No new matter has been added as the amendments are supported in the specification as filed, at page 7 at the end of paragraph [0026] (claims 26 and 29) , page 11 at the end of paragraph [0037], and in Figs. 6 and 7 (claims 22, 37, 40 and 42). Claim 24 has been amended to correct an obvious antecedent basis problem, and accordingly is not altered in scope.

The claims stand rejected based on a statutory type double patenting rejection (same invention) as allegedly being identical to some of the claims of prior U.S. Patent No. 6,647,507 (the "'507 patent"). Without admitting that the claims prior to this amendment are, in fact, identical to those of the '507 patent, Applicant here overcomes the double patenting rejection by amending the independent claims 22, 26, 29, 37, and 40, so that they are different in scope than any claim of the '507 patent. As indicated above, the amendments are fully supported in the Specification as filed, and accordingly no new matter has been added. Reconsideration and withdrawal of the double patenting rejection is therefore respectfully requested.

The Office Action at page 3 also rejects some of the dependent claims as being allegedly anticipated under 35 U.S.C. §102(e), by the '507 patent. Applicant, however, respectfully disagrees with this rejection, because Section 102(e) provides:

A person shall be entitled to a patent unless the invention was described in ... (2) a patent granted on an application for patent **by another** filed in the United States before the invention by the Applicant for patent ... [Emphasis added]

Since the present application has as its sole inventor Keith E. Dow, who is also the sole inventor of the '507 patent, the latter is not a "patent granted on an application for patent by another". Accordingly, since the sole inventor in the present application is the same person as the sole inventor of the '507 patent, and both are assigned to the same entity, the latter cannot be used to reject the claims of the present application

under 35 U.S.C. §102(e). Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

The dependent claims also stand rejected as anticipated by the '507 patent, this time under 35 U.S.C. §102(b). This rejection is also improper, because the '507 patent was neither issued or published more than a year prior to the filing date of the present application. The present application was filed November 5, 2001, while the '507 patent issued almost two years later, in November of 2003. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

In sum, a good faith attempt has been made to explain why the rejection of the claims is improper, and how the claims are believed to be in condition for allowance. A Notice of Allowance referring to claims 22-42, as amended here, is therefore respectfully requested to issue at the earliest possible date.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated: December 20, 2004

By 
Farzad E. Amiri, Reg. No. 42,261

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(310) 207-3800

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450 on December 20, 2004.


Margaux Rodriguez December 20, 2004